

**ASSEMBLY BILL**

**No. 1189**

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**Introduced by Assembly Member Skinner**

February 27, 2009

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An act to amend Sections 156, 156.1, 156.3, and 156.4 of, and to add Sections 156.5 and 156.6 to, the Streets and Highways Code, relating to fish passages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1189, as introduced, Skinner. Fish passages.

Existing law provides that the Department of Transportation has full possession and control of all state highways. Existing law requires the department to prepare an annual report to the Legislature describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage, as defined. Existing law requires the department to complete assessments of potential barriers to the passage of anadromous fish prior to commencing any repair or construction project using state or federal transportation funds. Existing law requires the department to submit the assessment to the Department of Fish and Game to be added to the CALFISH database. Existing law requires projects to be constructed without presenting barriers to fish passage.

This bill would define the term "barrier" for purposes of these provisions and would require the annual report submitted to the Legislature by the department to include the precise location of past, current, or future remediation projects and a schedule for the remediation of existing barriers to anadromous fish passage. The bill would require the department to prioritize remediation projects that complement planned or active restoration efforts. The bill would require the

department to complete an assessment of potential barriers to the passage of anadromous fish prior to commencing any maintenance project using state or federal transportation funds. The bill would require the assessment for a transportation project that affects a stream crossing on a stream where anadromous fish are, or historically were, found to include the status of barriers, as specified. The bill would require this assessment to be presented to relevant legislative committees as well as to the Department of Fish and Game. It would provide that if a repair or maintenance project involves construction or retrofit of transportation infrastructure that creates a barrier, that barrier shall be remediated. The bill would require the department and the Department of Fish and Game to, by March 1, 2010, jointly identify high-priority streams in each district, as specified, and submit a report to the Legislature. The bill would require the department to remediate barriers to fish passage using any federal funds received pursuant to the federal American Recovery and Reinvestment Act of 2009, to the extent permitted by federal law.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 156 of the Streets and Highways Code  
2     is amended to read:  
3     156. For purposes of this article, the following definitions shall  
4     apply:  
5     (a) “Fish passage” means the ability of an anadromous fish to  
6     access appropriate habitat at all points in its life cycle, including  
7     spawning and rearing.  
8     (b) “Department” means the Department of Transportation.  
9     (c) “Barrier” means a complete, partial, or temporal obstruction  
10    or impediment to fish passage, including physical conditions  
11    associated with infrastructure that may impede passage.  
12    SEC. 2. Section 156.1 of the Streets and Highways Code is  
13    amended to read:  
14    156.1. The Director of Transportation shall prepare an annual  
15    report describing the status of the department’s progress in locating,  
16    assessing, and remediating barriers to fish passage *on anadromous*  
17    *streams. This The report shall include the precise location of past,*  
18    *current, or future remediation projects and a schedule for the*  
19    *remediation of existing fish barriers identified pursuant to Section*

1 156.4. The report shall be given to the Legislature by October 31  
2 of each year through the year 2020.

3 SEC. 3. Section 156.3 of the Streets and Highways Code is  
4 amended to read:

5 156.3. (a) For any project using state or federal transportation  
6 funds programmed after January 1, 2006, the department shall  
7 ensure that, if the project affects a stream crossing on a stream  
8 where anadromous fish are, or historically were, found, an  
9 assessment of potential barriers to fish passage is done prior to  
10 commencing project design. The department shall submit the  
11 assessment to the Department of Fish and Game and add it to the  
12 CALFISH database. If any structural barrier to passage exists,  
13 remediation of the problem shall be designed into the project by  
14 the implementing agency. New projects shall be constructed so  
15 that they do not present a barrier to fish passage. When barriers to  
16 fish passage are being addressed, plans and projects shall be  
17 developed in consultation with the Department of Fish and Game.

18 (b) *The department shall prioritize remediation projects that*  
19 *complement planned or active restoration efforts.*

20 SEC. 4. Section 156.4 of the Streets and Highways Code is  
21 amended to read:

22 156.4. (a) For any repair, *maintenance*, or construction project  
23 using state or federal transportation funds that affects a stream  
24 crossing on a stream where anadromous fish are, or historically  
25 were, found, the department shall perform an assessment of the  
26 site for potential barriers to fish passage and submit the assessment  
27 to the Department of Fish and Game: *and to the relevant legislative*  
28 *committees of the Legislature. The assessment shall include the*  
29 *status of each barrier, as follows:*

30 (1) *Not a barrier.*

31 (2) *Partial.*

32 (3) *Temporal.*

33 (4) *Temporal and partial.*

34 (5) *Temporal and total.*

35 (6) *Total.*

36 (7) *Unknown.*

37 (b) *Where a repair or maintenance project involves construction*  
38 *or retrofit of transportation or related infrastructure, including*  
39 *culverts or weirs, that directly creates a barrier, that barrier shall*  
40 *be remediated.*

1 SEC. 5. Section 156.5 is added to the Streets and Highways  
2 Code, to read:

3 156.5. The department and the Department of Fish and Game  
4 shall, by March 1, 2010, jointly identify high-priority streams in  
5 each district, based on the quality or quantity of fish habitat above  
6 or below a barrier and other applicable factors, and shall submit a  
7 report to the Legislature.

8 SEC. 6. Section 156.6 is added to the Streets and Highways  
9 Code, to read:

10 156.6. The department shall remediate barriers to fish passage  
11 using any federal funds received pursuant to the federal American  
12 Recovery and Reinvestment Act of 2009, to the extent permitted  
13 by federal law.